

Notice of Allowability

Application No.

09/845,731

Examiner

Carolyn L. Smith

Applicant(s)

JACKOWSKI ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/4/05.
2. ☒ The allowed claim(s) is/are 1 and 36-43.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission, filed 4/4/05, has been entered.

Amended claims 36 and 41-43, filed 4/4/05, are acknowledged.

Claims herein under examination are 1 and 36-43.

Applicant's arguments, filed 4/4/05, with respect to claims 1 and 36-43 have been fully considered and are persuasive. The previous rejections have been withdrawn.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The invention directed to an isolated biopolymer marker peptide consisting of amino acid residues 2-11 of SEQ ID NO: 1, a method for diagnosing myocardial infarction, congestive heart failure, or intracerebral hemorrhage via comparison of mass spectrum profiles consisting of the claimed peptide, and a kit for determining the presence of claimed peptide, which are not found in the prior art. The lack of written description rejection for claims 36-40, filed 10/29/03, was removed once the limitations "effective to maximize" (claim 36), "and" (claim 36, line 15), and "cerebrospinal" (claim 38) were deleted. The lack of scope of enablement rejection for claims

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36-40 was removed once these claims recited necessary preparation steps to get the sample in a form that can be analyzed by mass spectrometry. The 35 USC 112, 2nd paragraph, rejection of claims 36-40 was removed once these claims recited necessary preparation steps to get the sample in a form that can be analyzed by mass spectrometry. Because no outstanding rejections remain, the claimed invention is deemed allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably **accompany** the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center. The faxing of such papers must conform to the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR §1.6(d)). The Central Fax Center number for official correspondence is (571) 273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Smith, whose telephone number is (571) 272-0721. The examiner can normally be reached Monday through Thursday from 8 A.M. to 6:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached on (571) 272-0718.

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Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instruments Examiner Tina Plunkett whose telephone number is (571) 272-0549.

September 12, 2005

MARJORIE A. MORAN
PRIMARY EXAMINER

Marjorie A. Moran

9/19/05